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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 1049

THE STATE OF TEXAS,
Petitioner,

vs.

ALBERTO BALLI, ET AL.,
Respondents.

RESPONDENTS' BRIEF OPPOSING WRIT OF CERTIORARI

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ALBERTO BALLI, *ET AL.*,
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RESPONDENTS' BRIEF OPPOSING WRIT OF CERTIORARI

Opinions Below

The opinion of the Texas Court of Civil Appeals, Fourth Supreme Judicial District, is reported as *State* v. *Balli,* 173 S. W. 2d 522.

The opinion of the Supreme Court of Texas is reported as *State* v. *Balli,* 190 S. W. 2d 71.

Statement

This suit originated in the District Court of Nueces County, Texas, as an action by the State of Texas, as proprietor of all vacant and unappropriated public domain within its boundaries, to recover an island, or sandbar, called "Padre Island," long held and claimed by Respondents and their predecessors in title, under a grant from the Mexican State of Tamaulipas, confirming an earlier survey and adjudication by the Government of Spain.

"Padre Island" is a long, low, sandy island, situated on the coast of Texas, between the rivers Nueces and Rio Grande, called, during the eighteenth century, "*La Isla de las Malaguitas,*" from the tribal name of its inhabitants; and "*Isla Blanca,*" from its composition of white sand. [Bolton: *Texas in the Middle Eighteenth Century.* Berkeley, California, 1915, pp. 104-106.]

This island was occupied "about the year 1800, when the Count of Sierra Gorda was Governor," by the Padre Nicolas Balli (or Vallin), and by 1821, had come to be known as "*La Isla del Padre Vallin.*" [Oberste: *History of Refugio Mission,* Refugio, Texas, 1942, pp. 290-293.] Official documents in evidence reflect that it was called, indifferently, "*La Isla del Santiago,*" and "*La Isla del Corpus Christi,*" by the officials of Tamaulipas in 1828-1829; and "*The Island of Corpus Christi, known by the name of the Island of the Padre Balli*" in documents executed after 1846. This name was shortened to "*Padre Island,*" during the 1850-1852 proceedings, by which name it is identified in many documents executed since.

Respondents defended upon the grounds that "Padre Island" had been

> (1) Surveyed and adjudicated (about the year 1800) by the Spanish Government in America to the Padre Nicolas Balli; (Sections 26-29 *General Colonization Law of Tamaulipas,* December 15, 1826; Art. 89 *Sayles Early Laws of Texas* I—133, 136; Gammel's Laws of Texas I—454) [R. 130]
>
> (2) Adjudicated, surveyed and granted to the Padre Nicolas Balli and his nephew, Juan Jose Balli, by the proper authorities of the Mexican State of Tamaulipas, during the years 1828 and 1829, in satisfaction of the former's rights under the Spanish Government, by valid and customary proceedings for the making of such grants; [R. 131-177 inc.]
>
> (3) Relinquished and confirmed to said Nicolas Balli and Juan Jose Balli by an Act of the Legislature of Texas, approved February 10, 1852; [R. 410, 411, 413]

(4) Used, held, occupied and enjoyed by Respondents and their predecessors in title, under claim of right, continuously from "about the year 1800 when the Count of Sierra Gorda was Governor" until the present date. [R. 414-423 inc.]

Questions Presented

The major questions presented were but three:

(1) Did Respondents prove a valid title to Padre Island, originating under the laws of Mexico and Spain?

(2) If so, was this a cession of the entire island, or was it limited to 11.15 square leagues of land?

(3) Did alluvion forming on the shores of the island, subsequent to its cession to the Ballis in 1829, become the property of the owners of the Balli title, or did it inure to the benefit of the State?

Petitioner, the State of Texas, added two subsidiary claims:

(4) That the Balli title to Padre Island was not confirmed by the Texas General Relinquishment Statute of February 10, 1852.

(5) That the Balli title is forfeit, in that its owners did not cause their grant to be surveyed, and file field notes of survey in the General Land Office, within the time prescribed by Section 8, Article XIV, of the Constitution of Texas of 1876. (Petitioner's Application and Brief, pp. 9, 61-71)

These secondary contentions are inconsistent within themselves. Section 8, Article XIV, of the Constitution of Texas could not, by its terms, apply to Padre Island, unless the Balli title was regular and valid, and confirmed by the General Relinquishment Statute of February 10, 1852.

The State's claim that the Balli title was not confirmed by the General Relinquishment Statute of 1852, does violence to accepted canons of construction; and, after the three

basic questions had been resolved in favor of the Balli title, became of no importance in the case.

By its final proposition, the State asked the courts to imply a forfeiture from the terms of an article of the Texas Constitution, which, in the two-thirds of a century since its adoption, had never been so construed. Petitioner cites the annexation agreement between Texas and the United States [Petitioner's Application and Brief, pp. 5-7, 50-52, 86-91], which provided that the new state of Texas should *rétain* "all vacant and unappropriated lands lying within its limits". *Lands theretofore granted by the government of Spain, the Mexican State of Tamaulipas, and the Republic of Texas were not "vacant and unappropriated". In this case the ultimate question decided by the Supreme Court of Texas was the mixed question of law and fact * * * as to whether the Island in question is "vacant and unappropriated public domain," and, as such, owned by the State of Texas; or whether it had passed into private ownership by valid grant to Respondents' predecessors in title, under the laws of Tamaulipas effective when the grant was made.* This was a matter of local law to be determined by the Supreme Court of Texas.

Petitioner's efforts to inject a constitutional question (Petitioner's Brief, pp. 50-60) are predicated upon passing references in the Texas courts' opinions to the protective effect of the Treaty of Guadalupe Hidalgo, and upon a mention of the Constitution of the United States in the opinion of the Supreme Court of Texas; where, after having overruled the State's contention that Section 8, Article XIV, of the Texas Constitution should be construed as working a forfeiture, it said:

State v. *Balli*, 190 S. W. 2d 71, 84:

> ". . . We are also of the opinion, as was suggested by the Honorable Court of Civil Appeals, that to construe the quoted section of the Constitution in accordance with the contentions of the State would necessarily raise serious constitutional questions. This is certainly true in the light of clause 2, Article 6, of the Constitution of the United States and certain other constitutional

provisions, including those prohibiting the impairment of obligations of contract, the denial to any citizen the equal protection of the laws, and the taking of private property without due process of law. Mr. Justice BRADLEY remarked in Gonzales *v.* Ross, 120 U. S. 605, 7 S. Ct. 705, 717, 30 L. Ed. 801, 809: 'A man whose title was good in 1876, when the constitution was adopted, whether his muniments of title were on record or not, could not be deprived of it by a simple *ipse dixit* of the constitution any more than by a legislative act.' "

Which is to say that of two possible constructions of a state constitution or statute, the courts prefer a construction which is not in conflict with the Supreme Law of the land.

Respondents' Points in Opposition to Certiorari

Respondents submit that the writ of certiorari should be denied in that

Respondents' Point No. One

References in the opinion of the Supreme Court of Texas to the Constitution of the United States, or to the Treaty of Guadalupe Hidalgo made under its authority, did not create a federal question cognizable by the Supreme Court of the United States.

Respondents' Point No. Two

It is the function of the Supreme Court of Texas to know and determine the laws under which lands were granted by a former sovereign within the present limits of Texas; and its holdings as to such laws are binding upon the Supreme Court of the United States.

Respondents' Point No. Three

Title to land acquired by accretion, or alluvion, is a title acquired by the laws of the State in which the land is situated; which each State determines for itself.

Respondents' Point No. Four

Where no question of the validity of a State statute under the Federal Constitution is presented, the federal courts are bound to follow the decisions of the highest court of a State upon questions relating to the State Constitution and its application to the laws of the State.

Respondents' Point No. Five

The Supreme Court of Texas decided every question presented in strict accord with the applicable decisions of the Supreme Court of the United States.

Respondents' Point No. One, Re-stated

References in the opinion of the Supreme Court of Texas to the Constitution of the United States, or to the Treaty of Guadalupe Hidalgo made under its authority, did not create a federal question cognizable by the Supreme Court of the United States.

Three of the five basic questions ruled upon by the Supreme Court of Texas had to do with rights to land situated in Texas; the fourth to the proper construction of a Texas statute, and the fifth to the interpretation of an article of the Texas Constitution of 1876.

All were matters of local law, as to which the considered opinions of the Supreme Court of Texas are binding upon the courts of the United States.

White v. *Burnley*, 20 How. (U. S.) 235; *League* v. *Egery*, 24 How. (U. S.) 264, 266, 267; *Christy* v. *Pridgeon*, 4 Wall. 196, 203; and more recently, *Kenedy* v. *Texas*, 258 U. S. 617; denying certiorari to the Supreme Court of Texas in *Kenedy Pasture Co.* v. *State*, 111 Tex. 200.

In so far as the rule of conciseness allows, Respondents have undertaken below to state the applicable law in the lan-

guage of the courts (italics ours). On the direct issue, the Supreme Court of the United States in *League* v. *Egery, supra,* said:

> ". . . In accordance with well-established principles in this court, *we accept this uniform and stable body of judicial decision from the court of last resort of the State in which the property is situated,* and in which the transactions that form the subject of this litigation took place, as *conclusive testimony of the rule of action prescribed by the authorities of the State,* as applicable to their interpretation and adjustment. *We do not inquire whether a more suitable rule might have been adopted, nor whether the arguments which led to its adoption were forcible or just.* We receive the decisions having the character that are mentioned in the extract we have made from *the opinion of the Supreme Court of Texas as having a binding force almost equivalent to positive law. . . .*"

Christy v. *Pridgeon, supra,* is even more explicitly in point:

> "This law of 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new State—as much so as if it had originated in her legislation. It had at the time no operation in any portion of what then constituted the United States. The interpretation, therefore, placed upon it by the highest court of that State must, according to the established principles of this court, be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be our opinion of its original soundness. *Nor does it matter that in the courts of other States, carved out of territory since acquired from Mexico, a different interpretation may have been adopted. If* such be the case, *the courts of the United States will, in conformity with the same principles, follow the different ruling so far as it affects titles in those States. The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different States to a similar*

local law, that law in effect becomes by the interpretations, so far as it is a rule for our action, a different law in one State from what it is in the other. . . ."

Citing *Shelby* v. *Guy,* 11 Wheat. 361, 367; where it is said:

"That the statute law of the States must furnish the rule of decision of this court, as far as they comport with the Constitution of the United States, in all cases arising within the respective States, is a position that no one doubts. *Nor is it questionable that a fixed and received construction of their respective statute laws in their own courts, makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction.* It is obvious that this admission may, at times, involve us in seeming inconsistencies—as, where States have adopted the same statutes, and their courts differ in the construction. Yet that course is necessarily indicated by the duty imposed upon us, to administer, as between certain individuals, the laws of the respective States, according to the best lights we possess of what those laws are. . . ."

The earlier federal decisions were collated, and the reasons for this rule were brilliantly stated, and applied to all courts, by Chief Justice WHEELER of the Supreme Court of Texas in *Smith* v. *Power,* 23 Tex. 29.

The only instance in which the Supreme Court of the United States has thought proper to review the decision of a Texas court of last resort in a suit involving title to, or boundaries of, a Mexican or Spanish grant of land formerly within the Mexican State of Tamaulipas, but now in Texas, was in *Sullivan* v. *Texas,* 207 U. S. 416; in which writ of error was granted on the only exception to the binding effect of the construction given by a State Supreme Court to a statute of its state; that where the federal court construes a contract of the State, it will interpret the contract for itself, though it may have been created by, or pursuant to, a statute of the State. The Supreme Court, after granting the writ, affirmed the judgment of the Texas Court of Civil Appeals: *Sullivan* v. *State,* 41 Tex. Civ. App. 89.

In construing the Texas statute of February 10, 1852, confirming title to numerous Tamaulipas grants, including the Balli title to Padre Island, and in determining the character of that title, under the laws in effect when the grant was made, the Supreme Court of Texas, in its opinion in the instant case, mentioned that Respondents' title was protected by the Treaty of Guadalupe Hidalgo. These references are now relied upon by the State, as raising a constitutional question for the consideration of the Supreme Court of the United States.

Since the State court held in favor of the rights claimed under the treaty, its ruling could not have created a constitutional question; aside from the self-evident proposition that the Supreme Court of Texas (and the Texas Court of Civil Appeals) arrived at the same conclusion on other satisfactory grounds. In *McKinney* v. *Saviego,* 18 How. (U. S.) 235, 240 the Supreme Court of the United States concluded that the Treaty of Guadalupe Hidalgo

> "Did not refer to any portion of the acknowledged limits of Texas;"

and in *Basse* v. *City of Brownsville,* 154 U. S. 610, in dismissing writ of error to Supreme Court of Texas in *City of Brownsville* v. *Basse & Hord,* 36 Tex. 461; the Supreme Court of the United States said:

> "In *McKinney* v. *Saviego,* 18 Howard, 240, it was decided that the Treaty of Hidalgo had no relation to property included within the State of Texas."

The land involved in the Brownsville suit was the townsite of that city, situated immediately upon the north bank of the Rio Grande, and formerly a part of the *ejidos,* or town commons, of the City of Matamoros, Tamaulipas, and the language used could be construed as a holding that the protection of the Treaty of Guadalupe Hidalgo did not extend to land within the present limits of Texas as one of the United States. (See notes U. S. Reports: *Basse* v. *Brownsville,* 154 U. S. 610.)

But as to titles to land between the Nueces and the Rio Grande, granted under the laws of Spain, or of the Mexican

State of Tamaulipas prior to December 19, 1836, the political authorities of Texas, as well as the Texas courts, have consistently taken a different view. On the political side, this appears from such Texas statutes as Act of February 8, 1850, Gammel's Laws, III—582; Act of February 10, 1852) Gammel's Laws, III—941, Paschal's Digest, Art. 4461; Act of February 11, 1854, Gammel's Laws, III—1533; Act of February 11, 1860, Gammel's Laws, IV—1471; Act of August 15, 1870, Gammel's Laws, VI—375; Section 8, Article XIV, Constitution of Texas, 1876; while as to all legitimate Tamaulipas titles originating prior to December 19, 1836, the courts of Texas have uniformly held that:

> "The claimant may rely upon his title under the laws of this State, including the Treaty of Guadalupe Hidalgo, which is binding as a law."

State v. *Sais*, 47 Tex. 307; *Clark* v. *Hills*, 67 Tex. 141; *Texas-Mexican Ry. Co.* v. *Locke*, 74 Tex. 370; *Haynes* v. *State*, 100 Tex. 426; *Cavazos* v. *Treviño*, 35 Tex. 133; *Corrigan* v. *State*, 42 Tex. Civ. App. 171 (Approved by the Supreme Court, 94 S. W. 101); *State* v. *Russell*, 38 Tex. Civ. App. 13 (Writ Refused); *State* v. *Gallardo*, 106 Tex. 274; *Kenedy Pasture Co.* v. *State*, 111 Tex. 200; *State* v. *Balli*, 190 S. W. 2d 71, 173 S. W. 2d 522.

In *Texas-Mexican Railway Co.* v. *Locke, supra*, the Supreme Court of Texas annulled Section 4, Article XIII, of the Texas Constitution of 1876, as being in conflict with the Treaty of Guadalupe Hidalgo, and, therefore, of Clause 2, Article VI, of the Constitution of the United States. And since the courts of Texas, as well as the Texas Legislature, have uniformly extended the protection of the Treaty of Guadalupe Hidalgo to lands ceded by the Mexican State of Tamaulipas by titles originating prior to December 19, 1836, no constitutional question is created by extending the protection of that treaty to the title here in suit; more especially since the same result is reached without regard to the treaty, on the sound and simple basis of Texas' obligations as a sovereign, and the honor and dignity of Texas, as a State.

Harris v. *O'Connor,* 185 S. W. 2d 993 (1014, 1016, 1018) (Writ of Error Refused, Want of Merit); *State* v. *Franco-American Securities,* 172 S. W. 2d 731 (Writ of Error Refused, Want of Merit); *Hilt* v. *Weber,* 252 Mich. 198.

Respondents' Point No. Two, Re-stated

It is the function of the Supreme Court of Texas to know and determine the laws under which lands were granted by a former sovereign within the present limits of Texas, and its holdings as to such laws are binding upon the Supreme Court of the United States.

In the language of Judge ROBERTS, of the Supreme Court of Texas, in *State* v. *Cuellar,* 47 Tex. 295, 305:

> ". . . It is the business of the courts of Texas to know and expound the laws pertaining to the rights to land situated in Texas, and here in suit, whether the laws, upon which the rights to the land depend, were laws made by the State of Texas, by the Republic of Texas, by the State of Tamaulipas as part of Mexico, or by Spain. . . ."

Under the uncontroverted proof in this record, the holding of the Supreme Court of Texas as to the validity of the Balli title presented no constitutional question, and was no more than a re-affirmance of well established rules. The Texas court concluded, as it was bound to conclude:

(1) The Balli title to "Padre Island" originated under the laws of the Mexican State of Tamaulipas, after September 7, 1821, the effective date of Mexican Independence; and before December 19, 1836. [R. 131-177]

State v. *Sais,* 47 Tex. 307; *State* v. *Gallardo,* 106 Tex. 274; *Haynes* v. *State,* 100 Tex. 426.

(2) Validity of the Balli "Padre Island" title is determined by the laws in effect in 1828 and 1829, when the grant was made, and the interpretation of those laws by the of-

ficers of government which made the grant; and the policy of those laws, and the correctness of the interpretation so given them, is no longer subject to review by our courts:

Barrow v. *Boyles,* 122 Tex. 416; *Bissell* v. *Haynes,* 9 Tex. 556; *Hanrick* v. *Jackson,* 55 Tex. 17; *Hardiman* v. *Herbert,* 11 Tex. 656; *Hatch* v. *Dunn,* 11 Tex. 708; *Ruiz* v. *Chambers,* 15 Tex. 586; *Groesbeck* v. *Golden,* 7 S. W. 362.

(3) A properly attested copy of the *expediente* of the Balli title, complete in all its parts, save for the absence of a "final concession," or "certificate of title," from the Governor of Tamaulipas; was filed for record December 31, 1847, in the office of the County Clerk of Nueces County, Texas, in which County the land was situated at that date; and this competent evidence of claim of title, supported by the claimants' possession, has been duly of record in Nueces County, since. [R. 412]

Sheldon v. *Milmo,* 90 Tex. 1; *Cavazos* v. *Treviño,* 6 Wall. 773; *Schunior* v. *Russell,* 83 Tex. 83; *Flores* v. *Hovel,* 125 S. W. 606; *Skov* v. *Coffin,* 137 S. W. 450; *Chapman* v. *Kellogg,* 252 S. W. 151.

(4) The title so recorded was supported at the trial by proof of compared and exemplified copies of this same *expediente,* from the municipal archives of Matamoros, Tamaulipas, the municipality in which the land in suit was situated at the date of the grant, and where the protocol of the *expediente* was properly deposited when the grant was made. [R. 131-177, 410-413]

State v. *Cardinas,* 47 Tex. 250, 286; *Texas-Mexican Ry. Co.* v. *Locke,* 74 Tex. 370; *Gonzales* v. *Ross,* 120 U. S. 605.

Paraphrasing the language of Chief Justice Roberts of the Supreme Court of Texas, in *State* v. *Cardinas,* 47 Tex. 250, 286; the *expediente* in evidence contains (save for the absence of the "final concession" as above noted)

> ". . . all of the requisites of a perfect title, under the laws . . . of that date . . ."

(5) Non-production of the "final concession" or "final certificate of title," is accounted for:

(a) By repeated findings by the Supreme Court of Texas:

Kenedy Pasture Co. v. *State,* 111 Tex. 200; *Haynes* v. *State,* 100 Tex. 426; *State* v. *Sais,* 60 Tex. 87.

that the State archives of Tamaulipas were destroyed by the French troops, at Victoria, Tamaulipas, in 1864; thus accounting for the non-existence of the protocols of certificates of title extended by the Governor of that State; and

(b) By the official reports of the Miller and Bourland Commission appointed by the State of Texas, in 1850, to investigate land titles in the area between the Nueces and the Rio Grande, that as to Padre Island, Nicolas and Juan Jose Balli "had obtained a title from the proper authorities;" and that all the original titles examined by the Commission in Cameron County had been lost by one of the commissioners "in the unfortunate wreck of the steamer *Anson*;" thus accounting for the non-production of the *testimonio* of the Balli grant. [R. 412-413]

(6) Without regard to, and assuming the total absence of such "final concession," or "certificate of title," the *expediente* in evidence established an adjudication to the Ballis of the island in suit; together with affirmative findings that the land had been selected and the island surveyed and its natural boundaries established in due course, and according to law; together with an express adjudication that all things necessary to be done by the Ballis had been done; and that, prior to December 19, 1836, and pending the issuance of a "final concession" or "certificate of title;" from the Governor of Tamaulipas, for which they were duly authorized to apply, and which the Governor was bound to extend to them, as a ministerial act, the Ballis had been placed in juridical possession of the island

as a whole. This was all that was necessary to evidence a cession of the island to the Ballis by "legitimate title," protected by the Treaty of Guadalupe Hidalgo, and the honor and fidelity of Texas as a State.

State v. *Sais*, 47 Tex. 307; *State* v. *Gallardo*, 106 Tex. 274; *Haynes* v. *State*, 100 Tex. 426; *State* v. *Russell*, 38 Tex. Civ. App. 13. (Writ Refused.)

(7) The Legislature of Texas, by express terms of the General Relinquishment Statute of February 10, 1852, recognized and confirmed the Balli title to Padre Island, and released and relinquished to those holding under it, all the right and interest of the State.

Clark v. *Hills*, 67 Tex. 141; *Reese* v. *Cobb*, 105 Tex. 399; *Downing* v. *Dias*, 80 Tex. 436; *Cavazos* v. *Treviño*, 35 Tex. 133; *Corrigan* v. *State*, 42 Tex. Civ. App. 171 (Writ Refused); *Sullivan* v. *Solis*, 52 Tex. Civ. App. 464; *United States* v. *Hancock*, 133 U. S. 193.

The Supreme Court of Texas also held, and was bound to hold:

(8) The grant from the State of Tamaulipas to Nicolas Balli and Juan Jose Balli was the grant of an island by name, which embraced all of the land, regardless of quantity, contained within its natural boundaries; and the proceedings evidenced by the *expediente* of the Tamaulipas title cannot be construed to hold that the State of Tamaulipas retained title for itself to any portion of the island, or intended so to do. [R. 131-177]

State v. *Gallardo*, 106 Tex. 274; *Heard* v. *Town of Refugio*, 129 Tex. 349; *Ford* v. *McRae*, 128 Tex. 106; *Town of Refugio* v. *Byrne*, 25 Tex. 193; *Arambula* v. *Sullivan*, 80 Tex. 615; *Lodge's Lessee* v. *Lee*, 6 Cranch. 237; *Veve y Diaz* v. *Sanchez*, 226 U. S. 234; *United States* v. *O'Donnell*, 303 U. S. 501; *Rutherford* v. *Tracy*, 48 Mo. 325; *Barksdale* v. *Barksdale*, 92 Miss. 166; *Stanley* v. *Green*, 12 Cal. 148; *Haley* v. *Amestoy*, 44 Cal. 132; *Truett* v. *Adams*, 66 Cal. 218.

(9) The cession of Padre Island to the Ballis by the Tamaulipas proceedings was a grant of the whole of an island

> "which lies between the sea and the Laguna Madre;" (Grant R. 152)

but the grantees were required, under the circumstances of that grant and the Tamaulipas General Law of Colonization of December 15, 1826, to pay only for the number of leagues of pasture land which it contained; it being the practice of the Mexican authorities (as well as our own) of that period to measure the price of ceded lands by the quantity of upland granted, and to make no charge for lowlands or lands otherwise considered worthless, though including them in the grant. (Section 23 *General Colonization Law of Tamaulipas*, December 15, 1826; Art. 89 Sayles *Early Laws of Texas* I—135; Gammel's *Laws of Texas* I—454)

Corrigan v. *State*, 42 Tex. Civ. App. 171; *Stover* v. *Gilbert*, 112 Tex. 429; *State* v. *Atlantic Oil Producing Co.*, 110 S. W. 2d 953 (Writ of Error Refused); *Walker* v. *Bailey*, 69 S. W. 2d 780; *Johns* v. *Schutz*, 47 Tex. 578; *State* v. *Texas Land & Cattle Co.*, 34 Tex. Civ. App. 460; *State* v. *Indio Cattle Co.*, 154 S. W. 2d 308 (Writ Refused, Want of Merit); *Lodge's Lessee* v. *Lee*, 6 Cranch. 237; *United States* v. *O'Donnell*, 303 U. S. 501; *Oklahoma* v. *Texas*, 268 U. S. 252; *Hardin* v. *Jordan*, 140 U. S. 371; *St. Paul & Pacific Railroad Co.* v. *Schurmeir*, 7 Wall. 272; *Coburn* v. *San Mateo County*, 75 F. 520; *Thos. B. Bishop Co.* v. *Santa Barbara County*, 96 F. 2d 198; *Jones* v. *Martin*, 35 F. 348; *White* v. *Burnley*, 20 How. (U. S.) 235; *Hilt* v. *Weber*, 252 Mich. 198.

(10) Doubts, if any, as to the extent and boundaries of a Mexican grant are resolved by the Act of Juridical Possession; and, in this instance juridical possession of the whole of the island was duly extended to the Ballis: [R. 172-173]

State v. *Russell,* 38 Tex. Civ. App. 13 (Writ of Error Refused); *Corrigan* v. *State,* 42 Tex. Civ. App. 171 (Writ of Error Refused); *State* v. *Corrigan,* 94 S. W. 101; *State* v. *Palacios,* 150 S. W. 229 (Writ of Error Refused); *Malarin* v. *United States,* 1 Wall. 282; *Graham* v. *United States,* 4 Wall. 259; *United States* v. *Pico,* 5 Wall. 536; *More* v. *Steinbach,* 127 U. S. 70; *Ainsa* v. *United States,* 161 U. S. 208.

(11) Where the proceedings for a Spanish or Mexican title executed in conformity to then existing laws, described the ceded land by known and fixed boundaries, such boundaries have never been disturbed by our courts, though they usually contain a large excess in quantity above that called for in the grant.

White v. *Burnley,* 20 How. (U. S.) 235; *Maxey* v. *O'Connor,* 23 Tex. 234; *Smith* v. *Power,* 23 Tex. 29; *State* v. *Galveston City Co.,* 38 Tex. 12; *State* v. *DeLeon,* 64 Tex. 553; *State* v. *Texas Land & Cattle Co.,* 34 Tex. Civ. App. 460; *Corrigan* v. *State,* 42 Tex. Civ. App. 171 (Writ Refused); *State* v. *Corrigan,* 94 S. W. 101; *State* v. *Russell,* 38 Tex. Civ. App. 13 (Writ Refused); *State* v. *Palacios,* 150 S. W. 229 (Writ Refused); *State* v. *Indio Cattle Co.,* 154 S. W. 2d 308. (Writ Refused for Want of Merit.)

(12) The State's only real contention, however stated, was that proof was made that the island granted contains more *sitios* than were stated in its title; and that the courts should so reform the grant, or otherwise diminish it, as to confine the Balli title to the acreage mentioned in the grant. This is contrary to well established law:

Welder v. *Carroll,* 29 Tex. 317, 332; *Corrigan* v. *State,* 42 Tex. Civ. App. 171 (Writ Refused); *State* v. *Russell,* 38 Tex. Civ. App. 13 (Writ Refused); *State* v. *Palacios,* 150 S. W. 229 (Writ Refused); *State* v. *Indio Cattle Co.,* 154 S. W. 2d 308 (Writ Refused, Want of Merit); *State* v. *Texas Land & Cattle Co.,* 34 Tex. Civ. App. 460; *State* v. *Galveston City Co.,* 38 Tex. 12.

In such cases, in the language of Chief Justice Moore of the Texas Supreme Court, in *Welder* v. *Carroll, supra*:

> ". . . The question for determination is neither the locality nor quantity of land to which either of the parties securing these several grants may have been entitled, but what amount of land was in fact granted to them, and what are its boundaries and limits? . . ."

Respondents' Point No. Three, Re-stated

Title to land acquired by accretion, or alluvion, is a title acquired by the laws of the State in which the land is situated; which each State determines for itself.

In *St. Louis* v. *Rutz*, 138 U. S. 226, 242; the Supreme Court of the United States said:

> "The question as to whether the fee of the plaintiff, as a riparian proprietor on the Mississippi River, extends to the middle thread of the stream, or only to the water's edge, is a question in regard to a rule of property, which is governed by the local law of Illinois. *Barney* v. *Keokuk*, 94 U. S. 324, 338; *St. Louis* v. *Myers*, 113 U. S. 566; *Packer* v. *Bird*, 137 U. S. 661. In *Barney* v. *Keokuk*, it is said, that if the States 'choose to resign to the riparian proprietor rights which properly belong to them in their sovereign capacity, it is not for others to raise objections.' "

and *Philadelphia Company* v. *Stimson*, 223 U. S. 605, 632; announces the general rule:

> "The established doctrine is invoked that the title to the soil under navigable waters within their territorial limits, and the extent of riparian rights, are governed by the laws of the several States, subject to the authority of Congress under the Constitution of the United States. Martin *v.* Waddell, 16 Pet. 367; Pollard *v.* Hagan, 3 How. 212; Weber *v.* Harbor Commissioners, 18 Wall. 57; Barney *v.* Keokuk, 94 U. S. 324, 338; Packer

v. Bird, 137 U. S. 661, 669; St. Louis *v.* Rutz, 138 U. S. 226, 242; Hardin *v.* Jordan, 140 U. S. 371, 382, 402; Illinois Central R. R. Co. *v.* Illinois, 146 U. S. 387, 435, 452; Shively *v.* Bowlby, 152 U. S. 1, 40-47; Water Power Co. *v.* Water Commissioners, 168 U. S. 349, 365. . . ."

Respondents' Point No. Four, Re-stated

Where no question of the validity of a State statute under the Federal Constitution is presented, the federal courts are bound to follow the decisions of the highest court of a State upon questions relating to the State Constitution and its application to the laws of the State.

Among the recent cases supporting this proposition are:

Schuylkill Trust Company v. *Commonwealth of Pennsylvania,* 302 U. S. 506, 512, wherein the Court stated, at p. 512:

> "*Second.* The contention that the State courts really have not construed the act but have themselves amended it, and that this is judicial legislation forbidden by the constitution of Pennsylvania, is not open here. As the trial court pointed out, courts, in applying a statute, general and sweeping in its terms, may construe it as not intended to reach subjects which, by reason of constitutional prohibition, the legislature is without power to touch. Whether the courts of the Commonwealth exceeded their powers under the state constitution is not a federal question. We accept their construction of the act."

Senn v. *Tile Layers Protective Union,* 301 U. S. 468, 477, wherein it was stated, at p. 477:

> "*Second.* The hearings below were concerned mainly with questions of state law. Senn insisted there that the statute was no defense, because the controversy was not a 'labor dispute' within the meaning of Sec. 103.62. The courts ruled that the controversy was a 'labor dispute'; and that the acts done by the defendant

were among those declared 'lawful' by Sec. 103.53. See also *American Furniture Co.* v. *Chauffeurs, Teamsters and Helpers Union*, 222 Wis. 338, 268, N. W. 250. Those issues involved the construction and application of the statute and the Constitution of the State. As to them the judgment of its highest court is conclusive."

Atchison, T. & S. F. R. Co. v. *Railroad Co.*, 283 U. S. 380, 390, 391, wherein it was stated at pp. 390, 391 that:

". . . The decision of the state court is conclusive so far as the constitution and laws of the State are concerned. . . ."

Swiss Oil Corp'n v. *Shanks*, 273 U. S. 407, wherein it was stated, at pp. 411, 412:

"As the case is brought here from a state court, the construction put by the court below upon the statutes and constitution of its own state is not open to review here. Southwestern Oil Co. *v.* Texas, 217 U. S. 114, 119; Brown-Forman Co. *v.* Kentucky, 217 U. S. 563, 569. Since the Kentucky court of appeals has held that the plaintiff is not entitled under the state law to the relief prayed even if the Act of 1918 be deemed invalid, no question as to the validity of that act under the Federal Constitution is presented for decision on this record."

To the same effect are: *Thornton* v. *Duffy*, 254 U. S. 361; *Bi-Metallic Investment Co.* v. *State Board of Equalization of Colorado*, 239 U. S. 441; *White* v. *Leovy*, 174 U. S. 91; *Marchant, Admnx.* v. *Pennsylvania Railroad Company*, 153 U. S. 380.

This rule and the cited cases effectively dispose of Petitioner's contention (Petitioner's Application and Brief, pp. 9, 61-71) that the Texas courts' construction of Section 8, Article XIV, of the Constitution of Texas; or of the Texas General Relinquishment Act of February 10, 1852, create federal questions cognizable by the Supreme Court of the United States.

Respondents' Point No. Five, Re-stated

The Supreme Court of Texas decided every question presented in strict accord with the applicable decisions of the Supreme Court of the United States.

1. Extent and Boundaries of Padre Island Grant to Nicolas and Juan Jose Balli.

Since the Balli title to Padre Island was specifically confirmed by the Texas Relinquishment Statute of February 10, 1852, there can be no reasonable difference of opinion as to the right action of the Supreme Court of Texas in upholding the validity of the grant.

Petitioner argues, however, that the grant was not of the whole of the island; and should have been limited to eleven and a half leagues; and that alluvion forming on the island after 1828 did not become the property of its owners, but accrued to the benefit of the State. (Petitioner's Brief, pp. 27, 33-43)

It is sufficient reply to these contentions that the Supreme Court of Texas decided against them, and that its decision is final and binding on all other courts.

It is not difficult to show, however, that the holdings of the Texas court are in strict accord with the decisions of the Supreme Court of the United States. Thus, as to the Texas court's determination that confirmation of the Balli title by the Legislature of Texas extended to the full limits of the Tamaulipas grant, many analogous cases by the Supreme Court of the United States are to the same effect:

United States v. *Hancock*, 133 U. S. 193; *United States* v. *Maxwell Land Grant Co.*, 122 U. S. 365; *Russell* v. *Maxwell Land Grant Co.*, 158 U. S. 253; *Gonzalez* v. *Ross*, 120 U. S. 605; *Langdeau* v. *Hanes*, 21 Wall. 521; *Airhart* v. *Massieu*, 98 U. S. 491; *Morrow* v. *Whitney*, 95 U. S. 551; *Ryan* v. *Carter*, 93 U. S. 78; *Lanfear* v. *Hunley*, 4 Wall. 204; *Robinson* v. *Minor*, 10 How. (U. S.) 627; *Tameling* v. *U. S. Freehold & Em. Co.*, 93 U. S. 644.

Petitioner's contrary argument springs from three dissenting opinions by judges of the Supreme Court of Texas,

the effect of which is that the State should have sued to establish De la Fuente's boundaries, rather than attack Respondents' valid grant. This is a matter of local law, as to which the Supreme Court of the United States will not inquire. But had the State sued to recover a portion, only, of the island on the basis of De la Fuente's measurements, this would have been a very different case.

The gravamen of the State's contention is that whereas the Ballis applied for the island in December, 1827, as containing 19½ *sitios* [square leagues]; no doubt on the basis of an early Spanish Survey, De la Fuente, the official Tamaulipas surveyor, measured it for 11.15 *sitios* in February and March, 1828; and whereas, the Miller and Bourland Commission, in 1850, recommended the Balli grant for approval as containing eleven and one-half square leagues; they then believed that the true area of the island was more than thirty square leagues. It contained 30½ leagues, as surveyed by Boyles in 1941.

These seeming discrepancies could have been readily explained. Padre Island has been surveyed and re-surveyed by the United States Coast and Geodetic Survey, along the line of mean high tide, at intervals since the annexation of Texas; and the reports and maps of such surveys are official documents of which the courts might take judicial notice; and are, if that were necessary, susceptible of easy proof. These U. S. Geodetic surveys indicate that the Ballis were remarkably accurate when, in 1827, they estimated the island as containing 19½ *sitios;* and that Miller and Bourland's 30-league estimate, in 1850, was at least ten leagues too large. They also show that the island increased in area but little during the nineteenth century; and that ten or more of its 30½ square leagues have resulted from accretions since 1904.

As for the difference between Balli's 1827 estimate of 19½ square leagues and De la Fuente's measurement of 11.15 *sitios* in 1828; De la Fuente's varas were, as a matter of law, longer than those used by Boyles, and by the early Spanish surveyors; and his area measurements were, in consequence, in larger square leagues. The unit of land measurement for this area as prescribed by the Spanish law was

the *Vara de Burgos,* or Castilian vara, equivalent to 33.36 English inches; reduced in Texas at an early date, to 33⅓ inches, for convenience in calculating surveys.

But the Mexican Imperial Colonization Law of January 15, 1823 (Sayles' Early Laws of Texas, Art. 31, Vol. I, pp. 42-46, Secs. 5 and 7; Gammel's Laws of Texas, I—28) prescribed a standard Mexican vara of "*tres pies geométricos,*" or three geometrical feet. This was also the vara prescribed for the Mexican State of Tamaulipas, by Article 14 of its General Colonization Law of December 15, 1826; (Sayles' Early Laws of Texas, I—133, Art. 89; Gammel's Laws of Texas, I—454) and continued to be the unit of land measurement in Tamaulipas until a shorter vara was established by a decree of the dictatorial central government of Mexico, June 1, 1839.

Galvan: Ordenanzas de Tierras y Aguas (Mexico, 1844), pp. 56, 57, 62; *United States* v. *Perot,* 98 U. S. 428.

Spanish lexicons agree that the *pié geométrico* was to the *pié de Burgos* as 1,000 is to 923. (A New Pronouncing Dictionary of the Spanish and English Languages, Velasquez de la Cadena; New York and London, 1852, 1900; *Diccionario de la Lengua Castellano por la Academia Española,* (Madrid, 1823 and 1869); *Diccionario de la Lengua Española, Real Academia, Española* (Madrid, 1925).

De la Fuente surveyed with a *cordel* of fifty varas, measured according to the official measure, sealed with the Mexican Seal as required by the State of Tamaulipas. [R. 142.] He must be presumed to have meant the 36-inch vara prescribed by Tamaulipas law. His *sitios* were oversize, proportionately, as compared with the Spanish *sitio,* measured by the *vara de Burgos,* or with square leagues measured by the 33⅓-inch vara used by Boyles in 1941.

The same result is otherwise attained, as a matter of law, in a simpler way. In Texas, as elsewhere, it is an established rule that where there is a conflict between the call in a grant for distance and quantity, and calls for natural or artificial objects, the former must yield to the latter in the absence of extrinsic evidence showing a contrary intent.

John Hancock Mut. Life Ins. Co. v. *Faries,* 112 S. W. 2d 500; *Buford* v. *Gray,* 51 Tex. 331; *Luckett* v. *Scruggs,* 73

Tex. 519; *Thatcher* v. *Matthews,* 101 Tex. 122; *Mosley* v. *Edds,* 80 S. W. 2d 401; *Krider* v. *Wintermann,* 108 S. W. 2d 452.

De la Fuente's field notes and *Plan Demonstrativo* show that he did not measure the circumference of Padre Island. He ran, instead, a base line along its Gulf shore and approximated the Laguna shore line by running transverses at intervals, usually of 10,000 varas, perpendicular to his base line. He notes seventeen of these transverses, fifteen of which called to run from the Gulf to the shores of the Laguna. His two most southerly transverses had no Laguna call. He mapped his Laguna shore line by connecting his terminal calls at the northerly and southerly ends of the island, and the Laguna ends of his seventeen transverses, with imaginary lines. Since he, and Boyles, who surveyed the Island for Texas in 1940, both ran the Gulf shore of the island, his call for that line in varas, and Boyles' call for the same line, (if using the same vara) should have been substantially the same. De la Fuente's vara call for this line is materially less than that of Boyles'. Since the terminal calls for this Gulf shore line are natural objects, De la Fuente's vara call must, as a matter of law, be so extended that his vara call and that of Boyles, will coincide. And when De la Fuente's transverses are located and proportionately extended on this same vara basis, and their calls for the shore of the Laguna given effect, the discrepancy becomes negligible, or disappears. De la Fuente chained the Gulf shore of the island with a *rawhide* cordel, while Boyles, of course, used a steel chain. De la Fuente notes that he corrected his *cordel* on frequent occasions; but much of his chaining must, nevertheless, have been done with a lengthened cord. (Boyles' testimony: Record 120-121.)

Correct understanding of the Texas court's opinion may be had from direct application of well established legal principles to undisputed facts:

United States v. *Sutherland,* 19 How. (U. S.) 363; *State* v. *Bruni,* 37 Tex. Civ. App. 2 (Writ Refused); *Von Rosenberg* v. *Haynes,* 85 Tex. 357.

2. Law of Maritime Alluvion Applicable to Tamaulipas-Texas Grants.

The Supreme Court of the United States has left no doubt as to its view that maritime accretions, and river bank alluvion, are governed by the same rules of law.

Banks v. *Ogden,* 2 Wall. 57; *County of St. Clair* v. *Lovingston,* 23 Wall. 46; *Shively* v. *Bowlby,* 152 U. S. 1; *Stevens* v. *Arnold,* 262 U. S. 266.

It has implied that such is the law "which prevails in this country, whether of mixed antecedents or the common law." (*Ker* v. *Couden,* 223 U. S. 268, 279)

An Act of the Congress of the Republic of Texas, approved January 20, 1840, adopted the Common Law of England as the rule of decision in Texas (Gammel's Laws of Texas, II—177); and the English Common Law is always controlling in Texas, if not changed by statute, or unless it impinges on vested rights. The Texas Act of 1840 repealed all laws in force in the Republic of Texas prior to September 1, 1836,

> "Except such laws as relate exclusively to grants, and the colonization of lands in the State of Coahuila and Texas, and also such laws as relate to the reservation of Islands and Lands, and also of Salt Lakes, Licks, and Salt Springs, Mines, and Minerals of every description, made by the General and State Governments."

Laws of the Mexican State of Tamaulipas, except as they were within the general exception as to reservations, were not among those preserved.

The State's contention that alluvion formed since 1829 on Padre Island, does not become the property of its owners, in accordance with the rule of the Common Law, pre-supposes

> (1) That under the law in effect in 1829, in Tamaulipas, when the island was granted, alluvion forming afterward on the shores of the island did not become the property of the owners of the island; but that title thereto remained in the proprietary sovereign; that is, in the State.

(2) That Texas, as sovereign, could not, or did not, relinquish its right to such maritime alluvion, either by adopting the Common Law of England as its rule of decision; or by relinquishing its rights in the island, under the terms of the General Confirmation Statute of 1852.

The Supreme Court of Texas, having decided the first proposition adversely to the State's contention, did not find it necessary to consider the second. Since this is a matter of local law, on which a decision of Texas' highest court is conclusive and final, it is perhaps unimportant that a decision on the second contention must have produced the same result.

But it is plain that Petitioner is as wholly mistaken as to the second proposition, as it is as to the first. Its error arises from a misapplication of decisions, right in themselves:

Manry v. *Robison,* 122 Tex. 213, 221; *Miller* v. *Letzerich,* 121 Tex. 248; *State* v. *Grubstake Investment Association,* 117 Tex. 53. The Supreme Court of Texas, in *Manry* v. *Robison, supra,* in terms, said:

> "The rule is an elementary one that in determining the *rights of holders of title under Mexican grants,* the laws of Mexico in effect when the grants were made control."

This is settled law when applied, as intended, to the *rights of holders under the grants.* Such rights cannot be diminished without impairing vested rights. The State's thesis here is that *neither can they be increased.*

Such an argument is, of course, without merit. In the language of the Supreme Court of the United States in *Barney* v. *Keokuk,* 94 U. S. 324; if the states

> "choose to resign to the riparian proprietor rights which properly belong to them in their sovereign capacity, it is not for others to raise objections."

In other words, a sovereign state may cede its incidental rights as sovereign proprietor, if it chooses so to do. When

the Republic of Texas, in 1840, elected to adopt the Common Law of England as the rule of decision in Texas, without reservation as to the laws under which grants were made by the State of Tamaulipas in the area between the Nueces and the Rio Grande, claimed by Texas after December 19, 1836; it released to Tamaulipas grantees, or their successors in title, all rights which Texas, as the succeeding sovereign, might have claimed under former laws of Tamaulipas, which were derogatory to the Common Law. This did not affect the rights of the grantees and their successors in title under Tamaulipas laws. Specifically, the State contends that under the laws of Tamaulipas, effective when Padre Island was granted, the grantees and their successors would have lost by erosion such portions of Padre Island as the winds and tides might take away, without any compensating advantage of gain by accretion, should the winds and tides add to their grant. The only effect of adopting the Common Law was to equalize the risk of loss and the right to gain; and the State of Texas cannot complain that it was to the State's disadvantage that the Republic of Texas should have chosen the more equitable rule; and the State is estopped by its own action in relinquishing to the grantees all its rights in Padre Island by the terms of the Act of February 10, 1852.

American decisions construing laws of "mixed antecedents,"—lands granted under the laws of Spain, or Mexico, followed by local adoption of the English Common Law,—have uniformly applied the Spanish Law of the Seashore, as if in substantial accord with Common Law rules:

Borax Consolidated Ltd. v. *City of Los Angeles,* 296 U. S. 10; *Shively* v. *Bowlby,* 152 U. S. 1; *United States* v. *Pacheco,* 2 Wall. 587; *City of Oakland* v. *Buteau,* 180 Cal. 83; *F. A. Hihn Co.* v. *City of Santa Cruz,* 170 Cal. 436; *Brickell* v. *Trammell, Governor,* 77 Fla. 544; *Apalachicola Land & Development Co.* v. *McRae,* 86 Fla. 393; *Thos. B. Bishop Co.* v. *Santa Barbara County,* 96 F. 2d 198; *Coburn* v. *San Mateo County,* 75 F. 520; *Jones* v. *Martin,* 35 F. 348.

On the direct question here considered, the ownership of alluvion formed on Spanish law grants, there appear to

have been but two adjudications; one by the Texas Court of Civil Appeals:

State v. *Texas Land & Cattle Co.*, 34 Tex. Civ. App. 460; in which no Writ of Error was sought by the State; and the other by the Supreme Court of California:

Strand Improvement Co. v. *City of Long Beach*, 173 Cal. 765, 770, 773.

Both Texas and California Courts applied to laws of "mixed antecedents" the common law rule as declared by the Supreme Court of the United States.

A more complete development of this proposition appears in Appendix "A" hereto, pages 29 to 48 inclusive.

3. Petitioner's Claim of Forfeiture under Section 8, Article XIV, Texas Constitution of 1876.

(Petitioner's Brief, pp. 60-75)

Having confirmed the Tamaulipas grant of Padre Island by the Act of February 10, 1852, the State of Texas could not thereafter forfeit or destroy the vested Balli title, whether by legislative enactment in 1870, or by constitutional provision in 1876. This was the effect of the leading Texas case of *State* v. *Sais*, 47 Tex. 307, 313-314; followed uniformly since.

Survey and field notes, though required by the Act of Confirmation, have never been held a prerequisite of title, where the grant confirmed can be otherwise identified. This is true both under the laws of Texas;

Clark v. *Hills*, 67 Tex. 141; *Byrne* v. *Fagan*, 16 Tex. 391; *Sullivan* v. *State*, 41 Tex. Civ. App. 89; *Corrigan* v. *State*, 42 Tex. Civ. App. 171; 94 S. W. 101; *State* v. *Gallardo*, 106 Tex. 274; *State* v. *Sarnes*, 47 Tex. 323; *Schaeffer* v. *Berry*, 62 Tex. 705; *McLellan* v. *Brown*, 209 S. W. 177; *Land* v. *Dunn*, 241 S. W. 580;

and by decision of the Supreme Court of the United States;

Langdeau v. *Hanes*, 21 Wall. 521; *Morrow* v. *Whitney*, 95 U. S. 551.

Since the construction of Section 8, Article XIV, of the Constitution of Texas, is a matter to be determined by the Supreme Court of Texas, its discussion here is pretermitted; but since Petitioner has sought to engraft it with a Federal Question, the point is presented in Appendix "B" hereto, pages 49 to 52 inclusive.

Writ of Certiorari Should Be Denied

This may well be the first and only instance where a State, suing as sovereign proprietor in its own courts, has refused to abide by the decision of its own highest tribunal, or has sought, on alleged "constitutional" grounds, to overturn a solemn judgment of its own Supreme Court.

Since the manifest purpose of each of the cited provisions of the Federal Constitution, and of the protective portion of the Treaty of Guadalupe Hidalgo, is to protect the rights of individual owners against arbitrary conduct by the State, it may be that no federal question can ever arise, where the constitutional protection claimed by the individual citizen is sustained by the holding of the State court. But it is certain that if a constitutional question could arise in a case of that nature, it can not be in a case where the only questions decided by the Supreme Court of Texas had to do with the title and boundaries of a grant of land situated in Texas; construction of an Act of the Legislature of Texas confirming that title; and the proper interpretation to be accorded a provision of the Constitution of the State; each of which questions it resolved favorably to the rights claimed, and against the contentions urged by the State.

Respondents respectfully submit that the application for writ of certiorari is without merit, and should be denied.

Dated: New York, N. Y., May 16, 1946.

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